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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ROBERT LEE CISSNA, Plaintiff and Appellant, v. CHARLES BARNES et al., Defendants and Respondents.	G049865 (Super. Ct. No. 30-2013-00678418) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Robert Lee Cissna, in pro. per., for Plaintiff and Appellant.

The Ryan Firm, Timothy M. Ryan and Matthew H. Aguirre for Defendants and Respondents.

* * *

This is an appeal from an order granting defense motions pursuant to Code of Civil Procedure section 425.16,[1] the anti-SLAPP statute,[2] in an action relating to the conduct of defendants Charles Barnes and Timothy Ryan (defendants) in a prior case. In the prior case, defendants successfully sued plaintiff Robert Lee Cissna for specific performance of a real estate purchase agreement. Plaintiff then filed the instant action. In ruling on the anti-SLAPP motion, the trial court concluded the instant case stemmed from protected activity and Cissna had failed to meet his burden to show the validity of his claims.

On appeal, Cissna argues his purpose was not to stifle defendants' rights but to seek accountability, defendants' speech was illegal, the case falls under the commercial speech exception, and the anti-SLAPP statute is unconstitutional on equal protection grounds. Because none of these arguments have merit, we affirm the judgment.

I

FACTS

The record designated by appellant is somewhat spotty, especially as it relates to the prior case. But from what we can tell, Ryan was Barnes's attorney in the prior case. According to our opinion in that case: "In February 2005, Barnes and Cissna executed a one-page, handwritten document entitled 'Lease with Option to Purchase' and also a one-page typewritten 'Lease Option Agreement Addendum.' The documents required, inter alia, a payment of $950 per month from Barnes to Cissna to keep the agreement in force. The documents contemplated a purchase price of $175,000 for three parcels of property located in Arch Beach Heights, in the event Barnes chose to purchase

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[1] Unless otherwise indicated, subsequent statutory references are to the Code of Civil Procedure.

[2] "SLAPP is an acronym for 'strategic lawsuit against public participation.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

the property from Cissna. According to Barnes's August 2005 complaint, he exercised his option to buy, but Cissna refused to perform the agreement. Barnes sought specific performance." (*Barnes v. Cissna* (June 25, 2007, G037802) [nonpub. opn.].) Barnes eventually sought, and was granted, permission to serve Cissna by publication, and Cissna's default was taken. The judgment ordered specific performance between the parties, requiring Barnes to pay for the properties less certain costs.

Barnes was served in June 2006. (*Barnes v. Cissna*, *supra*, G037802.) Cissna filed a notice of appeal on October 31, 2006. We dismissed the appeal as untimely on June 25, 2007. (*Ibid.*) We also noted that even had we jurisdiction to consider the appeal, Cissna was unlikely to prevail. His brief primarily addressed matters outside the record and included few record citations, and was accordingly subject to being stricken according to court rules. He was reminded "litigants who represent themselves in court are held to the same standards as licensed attorneys. [Citation.]" (*Ibid.*)

On September 30, 2013, Cissna filed the instant action "for constructive trust . . . breach of contract, fraud, quiet title, unlawful detainer, slander of title, restoration of title, malpractice and intentional infliction of severe emotional distress." Among his allegations were that the properties that were the subject of the prior action were "wrongfully taken" from him. He claimed he never received service in the prior action, but the court nonetheless "gave the defendants the plaintiff's property." His claim for constructive fraud alleged defendants, in the prior action, "MISLEAD THE COURT. These defendants misrepresented the facts."

In the cause of action for breach of contract, he alleged Barnes failed to make rental payments in March through June of 2005, which was "deliberately designed to defraud the plaintiff and deprive him of his property without compensation," justifying punitive damages to "discourage such racketeering." Ryan knew or should have known and/or conspired with Barnes about the alleged breach of contract. The fraud claim

alleged defendants "filed a law suit with the intention to get possession of the plaintiffs' property . . . ." The claim for quiet title alleged no additional facts, but requested title be restored to Cissna and that he "be awarded the consideration per the terms of the February . . . 2005 contract." The claim for unlawful detainer is essentially similar. Cissna alleged, in his "slander of title" claim, that defendants misrepresented the lease/option contract as a land sales contract, constituting a slander of title, and sought damages. In his claim for malpractice, Cissna alleged malpractice against Ryan, Barnes's attorney. Finally, in his claim for intentional infliction of severe emotional distress, he alleged he "has been so vexed by the activity of the defendant that he has suffer[ed] severe emotional distress" that had "crippled" his legs.

On October 24, 2013, defendants filed the instant anti-SLAPP motion. They argued the instant case arose from defendants' alleged conduct in the prior action, constituting a SLAPP, and the litigation privilege barred all of Cissna's claims. They also sought attorney fees and costs of $2,060. Cissna opposed, arguing no public issue was involved, there was no attempt to violate defendants' first amendment rights, and due to fraud or misrepresentation, the motion should not be granted. The record on appeal does not reflect any evidence Cissna submitted with his opposition. He did submit a declaration with his opposition essentially restating several of the points therein, including that defendants either mistakenly or wrongfully received a judgment in the prior case.

The court granted the anti-SLAPP motion and ordered Cissna to pay $2,060 in attorney fees and costs. Cissna now appeals.

II

DISCUSSION

Cissna's briefs are problematic. Rather than addressing the anti-SLAPP motion's components separately, he jumps back and forth in a rather confusing manner.

We therefore first address the applicability of the statute, then Cissna's probability of prevailing, and finally we will address his remaining arguments.

A. The Anti-SLAPP Statutory Framework

The anti-SLAPP statute states: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) The purpose of the anti-SLAPP statute is to dismiss meritless lawsuits designed to chill the defendant's free speech rights at the earliest stage of the case. (See *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 815, fn. 2.) The statute is to be "construed broadly." (§ 425.16, subd. (a).)

Section 425.16, subdivision (e), specifies the type of acts covered by the statute. As relevant here, an "'act in furtherance of a person's right of petition or free speech . . . in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law . . . ." (§ 425.16, subd. (e).)

To determine whether an anti-SLAPP motion should be granted or denied, the trial court engages in a two-step process. "'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection

with a public issue," as defined in the statute. (§ 425.16, subd. (b)(1).)'" (*Jarrow Formulas, Inc. v. LaMarche, supra,* 31 Cal.4th at p. 733.)

If that threshold is met, courts then look to the second step, determining whether the plaintiff has demonstrated a probability of prevailing on the merits. To do so, the plaintiff must state and substantiate a legally sufficient claim (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122-1123), thereby demonstrating his case has at least minimal merit. (*Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1105 (*Cole*).)

"Put another way, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' [Citations.]" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.) Accordingly, Cissna "must produce evidence that would be admissible at trial. [Citation.]" (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

On appeal, we "review an order granting an anti-SLAPP motion de novo, applying the same two-step procedure as the trial court. [Citation.]" (*Cole, supra,* 206 Cal.App.4th at p. 1105.) In conducting our review, "[w]e consider 'the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.' [Citation.] " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

B. Protected Activity

We must first decide whether the challenged claims arise from acts in furtherance of the defendants' right of free speech or right of petition under one of the categories set forth in section 425.16, subdivision (e). Cissna argues that he had no intent

to limit defendants' free speech, but Cissna's subjective intent does not matter. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 74.) "[T]he anti-SLAPP statute, construed in accordance with its plain language, incorporates no intent-to-chill pleading or proof requirement. [Citation.] Consequently, a defendant who meets its burden under the statute of demonstrating that a targeted cause of action is one 'arising from' protected activity (§ 425.16, subd. (b)(1)) faces no additional requirement of proving the plaintiff's subjective intent." (*Ibid.*) Additionally, it is irrelevant whether the lawsuit actually had a chilling effect. "The same considerations of law and policy, generally, that bar judicial imposition on the anti-SLAPP statute of an intent-to-chill proof requirement bar judicial imposition of a chilling-effect proof requirement. [Citations.]" (*Id.* at p. 75.)

"It is well established that filing a lawsuit is an exercise of a party's constitutional right of petition. [Citations.] ""'[T]he constitutional right to petition . . . includes the basic act of filing litigation or otherwise seeking administrative action.'"" [Citations.]" (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) "Under these accepted principles, a cause of action arising from a defendant's alleged improper filing of a lawsuit may appropriately be the subject of a section 425.16 motion to strike. [Citation.]" (*Id.* at p. 1087-1088.) The entire gravamen of Cissna's case is that defendants wrongfully filed and prosecuted the prior action, depriving him of his property and causing other alleged damages. Thus, the first prong of the anti-SLAPP statute is readily satisfied.

Cissna argues the anti-SLAPP statute cannot be used by a defendant who is sued for speech that is illegal as a matter of law, citing *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320. Cissna is correct, but he presents no evidence that narrow exception applies here. It applies only "where either the defendant concedes the illegality of its conduct or the illegality is conclusively shown by the evidence . . . ." (*Id.* at p. 316.) In *Flatley*, the conclusive evidence was an extortionate letter from the defendant. (*Id.* at pp. 307-309.)

Moreover, subsequently it has been recognized that "the Supreme Court's use of the phrase 'illegal' [in *Flatley*] was intended to mean criminal, and not merely violative of a statute." (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654.) The court noted: "[A] reading of *Flatley* to push any statutory violation outside the reach of the anti-SLAPP statute would greatly weaken the constitutional interests which the statute is designed to protect." (*Ibid.*) We agree. Cissna presented no evidence to the trial court to support any of his allegations (as we will shortly discuss) much less that any speech by defendants was illegal per se.[3] Thus, we conclude defendants have demonstrated this case arises from protected activity within the meaning of the anti-SLAPP statute.

Cissna, however, argues this case falls into the commercial speech exception to the anti-SLAPP statute. As pertinent here, the exception states: "Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist: [¶] (1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's

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[3] In his reply brief, apparently for the first time, Cissna cites *United States v. Alvarez* (2012) 567 U.S. ___ [132 S.Ct. 2537], the case which held the Stolen Valor Act of 2005 unconstitutional. He is apparently trying to argue that because he merely alleged fraudulent behavior by defendants, that is enough, under the First Amendment, to exempt them from the ambit of the anti-SLAPP statute at the first stage of the analysis. He has no authority for this proposition, and we decline to adopt it for the fairly obvious reason that it would be the exception that swallowed the rule. Whether a plaintiff has sufficient evidence to establish fraud, and therefore minimal merit, is a question for the second phase of the anti-SLAPP analysis. Absent the kind of egregious, admitted or clearly established behavior present in *Flatley*, cases alleging fraud are not exempt from the anti-SLAPP statute.

goods or services, or the statement or conduct was made in the course of delivering the person's goods or services. [¶] (2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue." (§ 425.17, subdivision (c).)

Under the two-prong anti-SLAPP test, whether the commercial speech exemption applies is a first prong question. (*Demetriades v. Yelp, Inc.* (2014) 228 Cal.App.4th 294, 308.) "The so-called 'commercial speech exemption . . . "is a statutory exception to section 425.16" and "should be narrowly construed."' [Citation.] It is [plaintiff's] burden to establish its application. [Citation.]" (*Hawran v. Hixon* (2012) 209 Cal.App.4th 256, 271.)

Cissna has failed to do so. He argues his action "is thus outside the application of the anti[-]SLAPP statute because it falls within the exemption CCP § 425.17(c) and because the speech of the defendants are not or were not legal because they robbed the appellant o[f] his property in the guise of a paid[] for Lease Option Sale."

Cissna misapprehends the applicability of the exception. Under its plain language, section 425.17 applies only when defendants are "primarily engaged in the business of selling or leasing goods or services . . . ." (§ 425.17, subd. (c)). Second, the exception is only applicable when the action arises from statements or conduct consisting of "representations of fact about that person's or a business competitor's business operations, goods, or services . . ." (*ibid.*) and those representations are made either in advertising, promotion, or during delivery of those services. Finally, the statement or conduct must be directed to an actual or potential customer. (*Ibid.*)

None of those conditions apply here. There is no evidence defendants are "primarily engaged in the business of selling or leasing goods or services . . . ." (§ 425.17, subd. (c)). The action does not arise from statements or conduct about defendants or a competitors goods or services, and no such conduct was directed toward a customer. This is a dispute about the lease and sale of property between two private parties. There are no allegations of advertising, promotion, or any statements directed anywhere except toward the court in the prior action.

Indeed, "[t]he legislative history indicates this legislation is aimed squarely at false advertising claims and is designed to permit them to proceed without having to undergo scrutiny under the anti-SLAPP statute." (*Demetriades v. Yelp, Inc.*, *supra*, 228 Cal.App.4th at p. 309.) This case has nothing to do with false advertising. Accordingly, the commercial speech exception does not apply, and defendants have met their burden under the first prong. We therefore proceed to determine whether Cissna has established a probability of success on the merits.

C. Probability of Success

As we noted above, to satisfy the second prong of the anti-SLAPP statute, Cissna was required to present the trial court with evidence that would be admissible at trial to support an argument that his complaint was legally sufficient. Cissna did not submit any evidence with his opposition to the anti-SLAPP motion. He simply points to his complaint and exhibits (the original 2005 agreement, a ledger purporting to show rent payments, three quit claim deeds, a grant deed, and a lis pendens) as "evidence," without explaining their import or why they support each cause of action. He argues: "The trial court judge committed error in NOT considering the plaintiffs argument towar[ds] ULTIMATE VICTORY. The trial judge abuse[d] his [discretion] by not stud[y]ing whether the plaintiffs evidence and probab[]ility o[f] victory. The trial judge only was interested in one fact and that was whether the [plaintiff] filed an action in the previous

court and he considered the plaintiff action a SLAPP suit to depri[]ve the [plaintiff] from exercising his right to file an action. This sole fact was all that the trial judge focused on and under the two prong test, the trial court should have given attention as to whether or not the plaintiff might prevail on the case."

Unfortunately, all the attention in the world cannot make up for the fact that standing alone and without explanation or argument, Cissna's complaint and exhibits thereto fail to constitute the admissible evidence necessary to support a likelihood of success on any, much less all, of his claims. Therefore the motion was properly granted on that ground alone. An anti-SLAPP motion is an evidentiary motion, and requires the opposing party to both present and explain the evidence presented in a way that is sufficient to satisfy its burden. Cissna failed to do so.

Moreover, defendants argue Civil Code section 47, subdivision (b) also known as the litigation privilege, constituted a complete defense to Cissna's claims as a matter of law. As pertinent here, that section provides: "A privileged publication or broadcast is one made: [¶] . . . [¶] (b) In any . . . (2) judicial proceeding . . . ." Prelitigation communications are also protected "when the statement is made in connection with a proposed litigation that is 'contemplated in good faith and under serious consideration. [Citation.]'" (*Aronson v. Kinsella* (1997) 58 Cal.App.4th 254, 262.)

"The principal purpose of [Civil Code] section 47[, subdivision (b),] is to afford litigants . . . the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions. [Citations.]" (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 213.) "Although originally enacted with reference to defamation [citation], the privilege is now held applicable to any communication, whether or not it amounts to a publication [citations], and all torts except malicious prosecution. [Citations.] Further, it applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation . . . . [Citations.]"

(*Id.* at p. 212.) "The breadth of the litigation privilege cannot be understated. It immunizes defendants from virtually any tort liability (including claims for fraud), with the sole exception of causes of action for malicious prosecution. [Citation.]" (*Olsen v. Harbison* (2010) 191 Cal.App.4th 325, 333.)

As we noted, the entire gravamen of this case is that the prior action wrongfully deprived Cissna of his property. His complaint includes many references to that action in nearly every claim. But the litigation privilege exists expressly to prevent such claims from going forward. Litigation must have an end, and Cissna cannot do an end run around his untimely appeal in the prior action by attempting to have the entire case reconsidered in a second matter.

While all of Cissna's claims must fall under the litigation privilege, there are additional reasons they must also fail as a matter of law. His first cause of action is for constructive trust. A constructive trust is an equitable remedy, not a substantive claim for relief. (*PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 398.) The right to such a trust must therefore be established via another valid cause of action, which he has failed to plead.

Cissna's second cause of action for breach of contract alleges unpaid rents in 2005. He filed the instant case in 2013. The statute of limitations had long since expired. (§ 337.) The same is true with respect to his third cause of action for fraud (§ 338, subd. (d).) The statute of limitations for quiet title, the fourth cause of action, depends on the nature of the relief sought, but when, as here, it is based on fraud, the three-year statute of limitations applies. (See *Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615.) It, too, is long expired.

A claim for unlawful detainer — Cissna's fifth cause of action — is valid only against a tenant, not an owner of a property (§ 1161), and accordingly, asking the court to require a defendant to re-deed the entire property is obviously not an available remedy. With respect to the sixth cause of action for slander of title, Cissna failed to

adequately plead that a false publication caused direct and immediate pecuniary loss. (*Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.)

In his seventh cause of action, Cissna alleges malpractice against Ryan, who was not Cissna's attorney, but counsel for Barnes. An attorney's duty to his or her clients is one of "undivided loyalty," (*Mason v. Levy & Van Bourg* (1978) 77 Cal.App.3d 60, 66), but that duty does not extend to third parties or opposing parties. Cissna simply has no standing to assert such a claim, and even if he did, the statute of limitations has expired. (§ 340.6) His final cause of action for intentional infliction of emotional distress does not allege, and he offers no evidence of, the extreme and outrageous conduct necessary to support such a claim.[4] (See, e.g., *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259.) He merely states he has been "vexed" by defendants' conduct, but that itself is insufficient; he must provide evidence of the conduct that satisfies the extreme and outrageous standard as a matter of law. Even if it he had, this claim, too, is barred by the statute of limitations (§ 335.1).

Accordingly, we conclude Cissna failed to satisfy his burden on the second prong of the anti-SLAPP analysis.

D. The Anti-SLAPP Statute is Constitutional

Cissna also argues the anti-SLAPP statute is unconstitutional. Inventing new statutory language, he claims "[t]he purpose stated in 425.16 first paragraph is to prevent rich landowners and other well heeled parties from getting an advantage over

[4] Further, although at various points in the complaint he alleges Ryan is Barnes's conspirator, yet he failed to obtain the court approval necessary to plead such an allegation, which is required by Civil Code section 1714.10.

well meaning average public concern citizens right to speek [*sic*] on public concerned matters."

This purported "purpose" is not evidenced anywhere in the statute, and is not reflected in the extensive case law the anti-SLAPP statute has generated since its adoption. A brief review of the case law reveals the statute's protections are available to any litigant, regardless of status. (See, e.g., *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57 [oil company brought anti-SLAPP motion against incorporated consumer group]; *Wang v. Wal-Mart Real Estate Business Trust* (2007) 153 Cal.App.4th 790 [Wal-Mart brought anti-SLAPP motion against individual plaintiffs].)

Cissna then argues that because the anti-SLAPP statute allegedly denies Cissna his right to free speech and petition, it constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. He asserts: "Those plaintiffs who are poor, who have losses by skillful attorneys or other tortfeasors should they also have the Right to Free Speech and the right to petition, but CCP 425.16(e) takes that right away. . . . Even if it is this statute may be unconstitutional, as discrimination between plaintiffs and defendants. The arguments on Anti-SLAPP statute have the sound of class warfare. i.e. rich/poor."

Cissna is, of course, factually wrong. The statute is invoked regularly, and often successfully, by the party who is generally perceived as the "underdog" in terms of wealth and power in a given action. (See, e.g., *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606 [city vs. animal rights activists]; *Briggs v. Eden Council for Hope & Opportunity*, *supra*, 19 Cal.4th 1106 [landlords vs. tenants' rights organization]; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993 [publicly traded corporation vs. smaller businesses]; *Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057 [hotel vs. union local].)

Further, while he cites generally to cases discussing the Equal Protection Clause, he offers no authority for the proposition the anti-SLAPP statute violates equal protection. *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 865, superseded by statute on other grounds as stated in *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 478, rejected the argument that the anti-SLAPP statute violates equal protection because it "infringed upon [plaintiff's] ability to access the judicial system." (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, *supra*, 37 Cal.App.4th at p. 865.) "Statutes that classify litigants and impose differing procedural requirements are generally valid so long as classification is supported by a rational basis." (*Ibid.*) "The Legislature made its intent crystal clear when adopting section 425.16. Subdivision (a) of the section states, 'The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through the abuse of the judicial process.' The procedure mandated by section 425.16 is rationally related to the Legislature's expressed goal. The statute does not bar complaints which arise from a person's exercise of his or her rights of free speech or petition for redress of grievances, but only provides a mechanism through which such complaints can be evaluated at an early stage of the litigation process. Given the constitutional nature of these rights, and the 'disturbing increase in lawsuits' which have been brought to discourage persons from exercising them, the Legislature could reasonably conclude such suits should be evaluated in an early and expeditious manner. The statute did not violate [plaintiff's] right to equal protection." (*Id.* at pp. 865-866.) The same applies here, and accordingly, we reject Cissna's argument, and find the motion was properly granted.

III

DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs on appeal. They may file any appropriate motion for attorney fees on appeal before the trial court. (§ 425.16, subd. (c)(1).)

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.